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State responsibility

Comments and observations received from Governments

Addendum

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II. Comments and observations received from Governments

General observations

Mexico

The Government of Mexico expresses its appreciation to the International Law Commission, especially its special rapporteurs, for their work on the topic of State responsibility. It hopes that the codifying exercise in which the Commission is engaged will lead to the adoption of a set of provisions to regulate this important area of international relations.[1]

Mexico considers that the Commission's work should take the form of an instrument that will codify the basic principles governing State responsibility and will help to resolve any conflicts that may arise in its implementation and interpretation. In this context, it is essential to avoid the inclusion of concepts that do not have sufficient support in international practice and tend to multiply or exacerbate differences instead of helping to resolve them.

In accordance with the agenda of its fifty-third session, the International Law Commission will consider and adopt on second reading the draft articles referred to it by the Drafting Committee. The Government of Mexico is thus submitting the following comments and requests the Commission to take them into account in its decision-making process.

Mexico supports the general structure of the draft articles provisionally adopted by the Drafting Committee and congratulates the Commission on its revision of the proposed organization of the articles adopted on first reading. The new structure more clearly and systematically reflects the various components of State responsibility and the way they interact. It was a particularly wise decision to introduce a distinction between the secondary consequences of an internationally wrongful act and the means available for dealing with those consequences.

It is noteworthy, however, that no dispute settlement mechanisms have been included in the new structure of the draft articles. The Government of Mexico takes note of the Commission's intention to continue to examine this issue during the second reading of the draft articles and reaffirms the need for the adopted text to make reference to and expand upon dispute settlement mechanisms, to the extent possible. Regardless of the final form of the draft, the inclusion of provisions for resolving disputes is essential in the light of some of the concepts deriving therefrom, including countermeasures.

Lastly, the Government of Mexico would like to pay tribute to Mr. James Crawford, whose dedication and efforts have been crucial to the conclusion of the Commission's work on this topic.

Dispute settlement provisions

Mexico

As has been indicated throughout this document, the Government of Mexico is in favour of including references to dispute settlement mechanisms in the draft articles, deeming them fundamental to the effective implementation of its provisions. Even if the draft articles were adopted as a declaration, it would be necessary to include dispute settlement provisions so that, without prejudice to the principle of free choice of means, these rules could help States determine the most appropriate mechanisms for resolving any differences that might arise in their implementation and interpretation.

In view of the possibility that States will resort to countermeasures, the Government of Mexico feels that third party dispute settlement methods are more suited to the nature of the draft articles.

Final form of the draft articles

Mexico

In Mexico's view, the result of the work of the International Law Commission on the topic of State responsibility should take the form of a binding instrument. After all, the signing of a convention would be the most suitable way to conclude an effort that has been going on for 50 years.

[1] The text of the articles provisionally adopted by the Drafting Committee on second reading is contained in the report of the International Law Commission on the work of its fifty-second session, *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 10* (A/55/10), pp. 124-140.

Moreover, a binding instrument is the only way of providing security to States and establishing concrete mechanisms for resolving differences that may arise in practice.

Support for the adoption of the draft articles in the form of a declaration has grown in recent years. This trend is based on the fact that in view of the difficulties involved in the topic of State responsibility, there is a risk that no agreement will be reached on a diplomatic conference or that a convention will not receive enough ratifications to enter into force. It has also been said that the adoption of the draft articles in a non-binding form could have greater impact by providing a guide to States concerning their obligations and rights, and offering accepted guidelines, in the form of a declaration, to courts considering relevant cases.

There are evident advantages and disadvantages to the adoption of a convention or a declaration. In the light of the debate in the Sixth Committee, Mexico feels that the final decision can be taken only when the definitive content of the articles has been established. As can be seen from reading the various reports of the Commission and the debates in the Sixth Committee, the topic of State responsibility is a complex one. In its current form, the draft contains a series of elements that provide important definitions on the nature of State responsibility. Excessive caution should not be a justification for depriving the international community of an instrument that will provide certainty. Mexico is willing to analyse all possibilities that may lead to a universally acceptable instrument.

Part One
The internationally wrongful act of a State

Chapter IV
Responsibility of a State in respect of the act of another State

Mexico

The Government of Mexico pays tribute to the Commission for its work on the formulation, on second reading, of chapter IV of Part One. Despite the difficulties arising from the primary origin of the rules contained therein, the Commission has managed to express them skilfully in the draft. The Government of Mexico endorses the general approach taken to articles 16 to 19 and will merely make some observations on a specific issue.

Article 16
Aid or assistance in the commission of an internationally wrongful act

Mexico

The situation is different in article 16, which refers to aid or assistance. The provision of aid or assistance in itself is not an indication that the State providing it does so with knowledge of the circumstances of the internationally wrongful act and that the act committed by that other State would have been internationally wrongful if it had been committed by the State providing the aid or assistance.

Article 17
Direction and control exercised over the commission of an internationally wrongful act

Article 18
Coercion of another State

Mexico

Articles 17 and 18 establish as one of the two conditions under which a State may be responsible in respect of the act of another that the former must have knowledge of the circumstances of the internationally wrongful act. In Mexico's view, this condition is unnecessary because it is implicit in the coercion or direction and control exercised.

Coercion or direction and control are deliberate actions, the commission of which would assume previous knowledge of the action in question. This situation, compounded by the fact that the articles require the action in question to have been committed by the State that coerced or directed and controlled it,

seems sufficient to justify an invocation of responsibility.

In the light of the foregoing, it would be preferable to delete subparagraph (a) of article 17 and subparagraph (b) of article 18. Otherwise these paragraphs might be interpreted as meaning that it is necessary to invoke a special type of knowledge, in addition to that implied in the coercion or direction and control exercised, which would be excessive.

Part Two
Content of international responsibility of a State

Chapter I
General principles

Article 32
Irrelevance of internal law

Mexico

The Government of Mexico feels that the inclusion of this article in the draft is useful and agrees with the Commission that its content differs in scope from the principle expressed in article 3.

Since the proposed rule is applicable to the whole of Chapter I of Part Two, however, it seems more appropriate to insert it immediately after article 28 (Legal consequences of an internationally wrongful act).

Article 33
Other consequences of an internationally wrongful act

Mexico

The Government of Mexico believes that the scope of this provision should be made more specific to prevent it from prejudicing or affecting in any way the consequences of an internationally wrongful act arising out of other rules of international law.

According to the Drafting Committee, article 33 has two functions:

> "(1) to preserve the application of rules of customary international law of State responsibility that might not be entirely reflected in the draft articles; and (2) to attempt to preserve some effects of a breach of an international obligation which did not flow from the rules of State responsibility proper, but stemmed from the law of treaties or other areas of international law" (A/CN.4/SR.2662, pp. 8-9).

The two functions will be considered separately.

As for the first function, it should be recalled that the Commission is engaged in codifying the customary rules applicable to State responsibility. It is therefore unfortunate, if this is truly the goal being pursued, that the draft indicates that there may be other consequences arising out of customary law that affect responsibility as such and are not expressly included in Chapter I of Part Two. Far from providing legal certainty, the retention of the article in its present form could be controversial.

As for the second function, Mexico agrees with the Commission that the other effects of an internationally wrongful act that do not flow from the responsibility regime as such but from other areas of international law are independent of the draft articles and should not be affected by them. This saving clause could be useful in preventing conflicts of interpretation.

Article 34
Scope of international obligations covered by Part Two

Mexico

Article 34 is an especially important draft article because it determines which subjects are covered by the obligations set forth in articles 28 to 33. It is therefore essential that its wording be as exact as possible. It is recognized that an internationally wrongful act incurs obligations that are owed to one or more States, depending on the circumstances of the case; in view of the ambiguity of the term "international community as a whole" as used in this article, however, doubts arise as to the obligations

owed to this still imprecise entity, the international community as a whole. What is the international community as a whole, and who are its members? To avoid problems of interpretation, Mexico would prefer to see the term "international community as a whole" replaced by "community of States as a whole", which is a more specific term and is derived from the Vienna Convention on the Law of Treaties.

The fact that the obligations may be owed to a State, to several States or to the community of States as a whole does not mean that the obligations of the responsible State are the same to each one of these States. As the Commission noted in article 34, paragraph 1, the scope of these obligations depends on the character and content of the obligation breached and on the circumstances of the breach. The paragraph fails to include, however, any reference to the effects of the internationally wrongful act on the State to which the obligation is owed, a basic element in defining the scope of responsibility. Mexico suggests including in the criteria for determining the scope of the obligations covered by Part Two the effects of the breach on the subject to whom these obligations are owed. An affected State could, on the basis of these effects, demand the consequences set out in articles 30 and 31.

Chapter II
Forms of reparation

Mexico

The Commission has done excellent work and has achieved the right balance in determining the forms of reparation and how they interact. Mexico's comments on this chapter of the draft articles are intended to clarify some of its positions.

Article 37
Compensation

Mexico

Article 37 establishes the obligation of the responsible State to compensate for the damage caused by the internationally wrongful act and, immediately thereafter, provides that the compensation will cover any financially assessable damage. Does this statement mean that moral damage is subject to compensation? The doubt arises from the provision in article 31, paragraph 2, stating that injury consists of any damage, whether material or moral, and from the fact that in some systems moral damage may be financially compensated. The Drafting Committee's comment implies that the Commission itself considers that moral damages are not financially assessable; this understanding is not, however, clearly expressed in the draft articles. If a clarification is not added to the effect that compensation covers any material damage that is financially assessable, the text could be interpreted as meaning that moral damage is also subject to compensation.

In accordance with relevant decisions in international jurisprudence, the Government of Mexico considers that satisfaction is generally an appropriate form of reparation for moral damage suffered by a State as a result of an internationally wrongful act.[2]

Article 38
Satisfaction

Mexico

Article 38, paragraph 2, describes in an illustrative manner the forms that satisfaction may take. The examples listed reflect general practice and are the expressions par excellence of satisfaction. The last phrase of the paragraph, "or another appropriate modality", appears to be too broad, however, and to cover endless possibilities. Despite the saving clause in paragraph 3, it would be preferable to limit the scope of paragraph 2 by adding the words "of a similar nature" to the phrase "or another appropriate modality". Such a step would place more precise limits on this form of reparation.

[2] *Corfu Channel* case, *I.C.J. Reports, 1949*, p. 35.

Chapter III
Serious breaches of essential obligations to the international community as a whole

Mexico

The Government of Mexico concurs with the elimination of the concept of "State crimes" from the draft articles. This action is a significant step in the process of ending a long-standing debate.

Article 41, however, changes the concept of State crimes, characterizing them now as serious breaches of essential obligations to the international community as a whole, a step that does not prevent additional problems and a series of misinterpretations from arising.

The terminology itself is unclear. What are serious breaches? How are they determined? How does this concept differ from the breach of *erga omnes* obligations? What are essential obligations? How are fundamental interests defined?

On various occasions, Mexico has noted that the nature and consequences of an internationally wrongful act are essential factors in determining the specific content of the responsibility of the State that has committed such an act, but that it is neither advisable nor necessary to make distinctions in the draft articles based on the hierarchy of the norm violated. The establishment of hierarchies tends to create a different responsibility regime depending on the norm violated and leads to a series of complex interrelations that go beyond the objective and purpose of the draft articles.

Part Two, Chapter III, of the draft articles illustrates the problems that arise from the setting up of a special regime in cases of breaches of essential obligations to the international community as a whole. As the debate in the Sixth Committee has shown, there is no consensus among States as to how to identify the norms that would fall into this category or on their specific consequences. There is still no clarity in international law on these points; Mexico therefore invites the Commission to consider this issue seriously in the light of the General Assembly debate.

Part Two bis
The implementation of State responsibility

Chapter I
Invocation of the State responsibility of a State

Mexico

Under the framework provided in articles 43 and 49, certain States have an interest in the performance of an obligation breached, even though they are not directly injured by the internationally wrongful act, and they should therefore be entitled to invoke their right under article 43. Mexico supports this position, since obligations unquestionably exist whose breach has effects on States other than those directly involved in the act in question. What is important is that the responsibility of the State committing the wrongful act should take different forms, depending on its impact on the State that invokes the responsibility. Not all States having an interest in a specific case have the right to compensation, nor may they demand all the consequences covered by articles 28 to 34. This is clearly regulated in draft article 49.

The distinction made in articles 43 and 49 is sensible. The concept of injured State expressed in article 43 is too broad, however. Since the definition of injured State determines a State's right to demand reparation and resort to countermeasures for an internationally wrongful act, it is essential to clarify and delimit its scope.

The Government of Mexico considers that the specific and objective injury suffered by a State should be the main factor in determining whether the State may be regarded as an injured State. Paragraph (a) and subparagraph (b) (i) of article 43 appear to reflect this need for a concrete and objective injury, whereas subparagraph (b) (ii) does not meet this criterion and allows for any State to be included in the concept of injured State, provided it argues that the breach of the obligation is of such a character as to affect the enjoyment of its rights or the performance of the obligations of all the States concerned. Mexico feels that the language of this subparagraph is vague and

imprecise, and it recommends that the Commission should consider deleting it from the draft articles.

In fact, the concept expressed in subparagraph (b) (ii) is covered by the supposition in paragraph (b) that establishes the hypothesis of invoking a State's responsibility to the community as a whole, which cannot be anything other than the community of States as embodied in organs such as the United Nations Security Council or General Assembly.

Given the broad range of entitlements attributed to a State other than the injured State, this reference should be eliminated from paragraph (b).

Moreover, as indicated in the comments on article 34, it is suggested that the term "international community as a whole" should be replaced by "community of States as a whole".

Article 45
Admissibility of claims

Mexico

The International Law Commission decided to eliminate article 22 of Chapter III, adopted on first reading and intended to regulate the exhaustion of local remedies, because it believed that article 45 dealt with the issue sufficiently. The Government of Mexico endorses this position and the procedural treatment now being given to this rule. It feels, however, that article 45 in its present form weakens the importance of the obligation to exhaust local remedies in cases concerning the treatment of non-nationals.

Article 22, adopted on first reading, categorically recognized the existence of the principle of the exhaustion of local remedies as "the logical consequence of the nature of international obligations whose purpose and specific object is the protection of individuals."[3] Despite this recognition, article 45, now provisionally adopted on second reading by the Drafting Committee, eliminates the references to cases concerning the treatment of individuals and merely indicates in a general way that the responsibility of a State may not be invoked if the claim is one to which the rule of exhaustion of local remedies applies, and any available and effective local remedy has not been exhausted.[4]

By this method, the Commission is trying not to prejudge its own future work in respect of diplomatic protection and recognizes the existence of a debate on the enforcement of the rule of exhaustion of local remedies outside the field of diplomatic protection.

The Government of Mexico feels that the draft articles should not weaken a principle that is firmly rooted in international law, i.e., the exhaustion of local remedies in cases concerning the treatment of non-nationals, simply in pursuit of a neutrality that does not appear to be justified. In this context, Mexico believes it to be more appropriate to distinguish these cases from others that may arise in the different areas of diplomatic protection to which this rule could apply, and suggests that an additional paragraph should be added to article 45, to be inserted between the present subparagraphs (a) and (b), recognizing that responsibility may not be invoked in cases concerning the treatment of non-nationals if they have not previously exhausted the effective and available local remedies. The present paragraph (b) could be reformulated to refer to situations other than the treatment of non-nationals.

Chapter II
Countermeasures

Mexico

Despite opposition from many States, the Commission has chosen to include the concept of countermeasures in the draft articles and confer general international recognition on them. The Government of Mexico regrets this decision. Although precedents can be found in international law authorizing the resort to countermeasures, their practical application is subject to very specific parameters, depending on the type of obligation breached. Attempting to regulate them in a general way and to authorize their application in response to the commission of any internationally wrongful act would virtually grant them acceptance in

[3] Paragraph 6 of the commentary on article 22, adopted on first reading by the International Law Commission at its forty-eighth session, cited in *Official Records of the General Assembly, Fifty-first Session, Supplement No. 10* (A/51/10), p. 132, footnote 209.

[4] See article 45 (b), ibid., *Fifty-fifth Session, Supplement No. 10*, p. 136.

international law, which would open the way to abuse and could aggravate an existing conflict.

If this situation is compounded by the absence of dispute settlement mechanisms, the unilateral nature of countermeasures and the many evident interrelationships among the draft articles — which, for example, authorize States other than the injured State to take countermeasures — the result may be extremely risky, especially for the weakest States.

It has not escaped the Mexican Government's attention that the Commission has been doing its utmost to regulate the resort to countermeasures. Articles 50 to 55 of the draft have been worded more clearly, specifying the object and limits of such measures and reducing the possibility that they will be used for punitive purposes. Difficulties still exist, however, which the Commission should take into account in order to minimize the risks of including countermeasures in the draft articles.

Mexico considers that, if the Commission decides to retain countermeasures in the draft, the following adjustments will be necessary.

Article 50
Object and limits of countermeasures

Mexico

The purpose of the wording of article 50 is to point out that countermeasures are exceptional in nature and that their sole object is to induce the responsible State to comply with its obligations. The Government of Mexico considers that the text is not emphatic enough to achieve this objective. In view of the flexibility of the conditions set forth in article 53, it might be concluded that a State could take a countermeasure, after notifying the responsible State, without their being any objective means to measure whether that State was willing to comply with its obligations or implement some mechanism for the peaceful settlement of disputes.

It is suggested, therefore, that the wording of article 50, paragraph 1, be strengthened to indicate expressly that:

"Countermeasures are an exceptional remedy. An injured State may take countermeasures against a State which is responsible for an internationally wrongful act only to the extent strictly necessary to induce that State to comply with its obligations under Part Two. In any case, the injured State shall inform the United Nations Security Council of the countermeasures taken".

Paragraph 2

Article 51
Obligations not subject to countermeasures

Paragraph 2

Article 54
Countermeasures by States other than the injured State

Mexico

In view of their implications, countermeasures may normally be taken only by the State that is directly affected by the internationally wrongful act. The draft articles provide for the possibility that States other than the injured State may take countermeasures in two cases:

(a) Where such measures are taken at the request and on behalf of any State injured by the breach; and

(b) Where the point at issue is a serious breach of essential obligations to the international community as a whole.

The Government of Mexico believes that the position expressed in article 54 is not supported by international law and raises serious difficulties, since it encourages States to take unilateral countermeasures where they have not suffered any specific and objective injury as a result of an internationally wrongful act. The many countermeasures that could be taken under this article would have disruptive effects and would give rise to a series of complex relationships. The Government of Mexico considers that article 49 and article 42, paragraph 2 (c), are sufficient to determine

the rights of States other than the injured State and that article 54 should be deleted. As a result of this deletion, the references to "State taking the measures" in article 50, paragraph 2, and "State taking countermeasures" in article 51, paragraph 2, should be replaced by a reference to the "injured State".

The structure of article 51 would appear to indicate that the obligation to respect the inviolability of diplomatic or consular agents, premises, archives and documents is not a peremptory norm of international law. The Commission concluded on first reading that although steps may be taken that affect diplomatic or consular rights or privileges, by way of countermeasures, inviolability is an absolute right that is not subject to derogation. How can it now be affirmed that it is not a peremptory norm? For these reasons, it is suggested that article 51, paragraphs (d) and (e), should be reversed.

Article 53, paragraph 5, sets out the obligation not to take or to suspend countermeasures if the wrongful act has ceased and the dispute is submitted to binding dispute settlement procedures. We accept this position, but we wonder whether it might not be necessary to incorporate other third-party dispute settlement mechanisms, even if they are not binding.

An extremely delicate issue is that relating to the provisions of the new article 54, providing for countermeasures by States other than the injured State. The non-injured State, as defined in article 49, is authorized to take countermeasures "at the request and on behalf of any State injured". This same provision makes it possible for collective countermeasures to be taken in the case of serious violations of essential obligations to the international community as a whole. In these circumstances, any State would be authorized to take countermeasures "in the interest of the beneficiaries of the obligation breached" with the understanding that more than one State could take these same countermeasures; in other words, they would take on a collective character.

The consequences of the existence of a serious breach by a State of an obligation owed to the international community as a whole and essential to the protection of its fundamental interests would seem, in principle, to be a matter covered by Chapter VII of the Charter of the United Nations. The response to a serious violation of this type has already been clearly defined in the legal order established by the Charter itself. In a regime of State responsibility, it would be unacceptable to introduce a mechanism that would change the collective security system enshrined in the Charter and allow for the taking of collective countermeasures, unilaterally decided, without the intervention of the central organ of the international community, and leaving it up to each State, if a grave violation has occurred, to determine the nature of the countermeasure to be taken and how that countermeasure will be terminated. The latitude provided by a system of this kind is incompatible with the institutional system created in 1945, whose norms and procedures are binding; it is therefore inadmissible to establish saving clauses such as those being proposed through collective countermeasures.

From the beginning, countermeasures have been controversial because of their close link with concepts that were considered outside the scope of law, such as self-help. Although it is true that the new text sets strict criteria for the use of countermeasures by defining their object and limits, specifying the obligations that are not subject to derogation, providing for proportionality and setting the conditions relating to their implementation, there is still considerable room for caprice and arbitrariness.

By applying the principle of *ubi lex non distinguit nec nos distinguere debemus*, it seems clear, according to Professor Antonio Gómez Robledo, that Article 41 of the Charter of the United Nations provides for some type of action; such action, however, like the action referred to in Article 42, is within the exclusive competence of the Security Council. Only by its delegation or authorization is such action within the competence of a regional body or arrangement (Article 53); this competence is itself not original but rather derived and subordinate. The term "action" in Chapter VII of the Charter — action which is reserved to the Security Council — includes both military and paramilitary action and economic, diplomatic and political sanctions. This understanding may be fairly inferred from the *obiter dictum* of the International Court of Justice in the *Certain Expenses of the United Nations* case.[5]

[5] Antonio Gómez Robledo, "Naciones Unidas y Sistema Interamericano (Conflictos Jurisdiccionales)". In: Inter-American Juridical Committee, *26th International Law Course* (OAS 1999), p. 496.

In his well-known interpretation of Article 41 of the Charter of the United Nations, Hans Kelsen maintains that, in his view, the measures provided for in both Article 41 and Article 42 are coercive. The purpose of these measures, he says, is to *enforce* the decisions of the Security Council, in other words to impose its decisions on a recalcitrant State.[6]

We must examine the matter more closely — as does Gómez Robledo — and ask ourselves whether, in the passage from singular to collective, something similar might occur to that described by the principle of physics which states that a quantitative variation in the cause produces a qualitative variation in the effect. There are good reasons, he notes, to think that it is one thing for an individual State to conduct its diplomatic or trade relations as it sees fit and another very different thing for a group of States, even if from the same region, to impose a situation of complete diplomatic ostracism or economic blockade on the target State with no chance for mitigation or exceptions — a situation, in brief, that is comparable to the *interdictio aquai et ignis* of Roman law. A financial and trade embargo may have a much more coercive effect on a State, its economy or even the very existence of its population than the use of armed force, which may not go beyond a few border incidents.[7]

If such measures are taken by the collective decision of a number of States, they clearly become equivalent to sanctions. As Professor Bowett states, it is unrealistic to claim that measures that do not involve the use of armed force may never constitute coercion; on the contrary, the list of such measures in Article 41 is a clear indication that the collective use of such measures must be seen as a coercive action.[8]

According to Professor Paolillo, coercive action is aimed at enforcing Security Council decisions and is therefore binding in nature. Accordingly, measures under Article 41 differ from those under Article 42 in the means involved in their implementation, but their nature is the same. Both are coercive in the sense that they are applied obligatorily, even against the will of the target State.[9]

The International Court of Justice, in its decision in the *Certain Expenses of the United Nations* case, after recognizing the concurrent competence of the Security Council and the General Assembly as to the "recommendations" that either body may make for the maintenance of international peace and security, categorically states that, on the contrary, the type of action which is solely within the competence of the Security Council is expressly stated in Chapter VII of the Charter, namely, action with respect to threats to the peace, breaches of the peace and acts of aggression.[10]

Besides the practical difficulties arising from the taking of countermeasures, the act of separating them from dispute settlement mechanisms has converted them into an even more subjective and arbitrary means of inducing a responsible State to perform its obligations. In the Government of Mexico's view, the rules of State responsibility should be limited to establishing the consequences of an internationally wrongful act from the standpoint of reparation and cessation.

Still, it is surprising that countermeasures are considered to be comparable, on an equal basis, with circumstances excluding wrongfulness, in other juridical categories, such as compliance with peremptory norms, self-defence, force majeure, distress state of necessity or the consent of the State. To grant countermeasures an acceptance that would legitimize actions deemed wrongful because they are not in compliance with a State's international obligations, and thus subject to the fulfilment of certain conditions — would mean providing considerable elasticity to a legal regime that by nature ought to be extremely rigorous. If a good deal of discretion is also granted in the taking of countermeasures, this could upset the balances required in order for the draft articles to be generally accepted.

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[6] Hans Kelsen, *The Law of the United Nations* (London, Stevens, 1950), p. 724.

[7] Gómez Robledo, op. cit., pp. 498-499.

[8] D. W. Bowett, "The Interrelationship of the Organization of American States and the United Nations within the context of collective security", Faculty of Law, *Universidad National Autónoma de México*, No. 60 (Oct.-Dec. 1960), p. 872.

[9] F. Paolillo, "Regionalismo y acción coercitiva regional en la Carta de las Naciones Unidas", *Anuario Uruguayo de Derecho International*, 1962, pp. 234-235.

[10] *Certain Expenses of the United Nations*, *I.C.J. Reports, 1962*, p. 165.

Moreover, substantive consequences arise from this distinction, in that it authorizes all States other than the responsible State to take measures to terminate the breach. If it is a question of a serious breach of essential obligations to the international community as a whole, the articles would clearly be legitimizing the taking of countermeasures by States other than the directly injured State, either individually or collectively.